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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/594,461	06/14/2000	Michael E Gaddis	HO-P02426US0	7470

22206 7590 09/20/2004
FELLERS SNIDER BLANKENSHIP
BAILEY & TIPPENS
THE KENNEDY BUILDING
321 SOUTH BOSTON SUITE 800
TULSA, OK 74103-3318

EXAMINER	
VU, VIET DUY	
ART UNIT	PAPER NUMBER
2154	

DATE MAILED: 09/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/594,461	GADDIS ET AL.
	Examiner	Art Unit
	Viet Vu	2154

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 02 July 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 7-57 and 62-72 is/are pending in the application.
 4a) Of the above claim(s) 7-57 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 62-72 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) 7-57 are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Restriction:

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 7-57, drawn to method of generating topological address space map for use in a router, classified in class 709, subclasses 220 and 238.

II. Claims 62-72, drawn to method of monitoring and analyzing data traffic and using the monitored data to update the routing table, classified in class 709, subclasses 224 and 242.

The inventions are distinct, each from the other because of the following reasons: Inventions I and II are related as subcombinations usable together. The subcombinations are distinct from each other if they are shown to be separately usable together. In the instant case, the subcombination I as has separate utility such as monitoring changes in network topology and using detected changes to generate a new/updated routing table. The subcombination II has separate utility such as monitoring data traffic over select links and using monitored data to modify the routing policy. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent

subject matter, restriction for examination purposes as indicated is proper.

2. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 7-57 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Art Rejection:

3. The text of 35 U.S.C. § 103(a) cited in the previous office action is hereby incorporated by reference.

4. Claims 62-72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petersen et al, U.S. pat. No. 6,178,235 in view of Salama et al, U.S. pat. No. 6,584,093.

Per claims 62, Petersen discloses a system and method for dynamically modifying routing policy in the network router comprising:

a) means at a plurality points of presence on the network (16, 20, fig. 1) for monitoring data traffic, each connectable to other peering partner networks (see col 4, lines 10-65),

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- b) a center (14, fig. 1) coupled to the network for receiving the monitored data correlating the plurality of messages with their associated routes (see col 5, lines 8-15),
- c) means for using the monitored to modify routing policy/data in the router, e.g., selecting or adding new routes (see col 6, lines 19-61).

Petersen does not explicitly teach utilizing an edge/border gateway in network backbone. The use of edge/border gateway is well known in the art as disclosed by Salama (see Salama's col 9, line 19 - col 10, lines 23).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a border gateway in Petersen because it would have enabled routing data across different networks.

Response to Amendment:

5. Applicant's arguments filed on 7/2/04 with respect to claims 62-72 have been fully considered but they are not deemed persuasive. It is noted that the rejection of claims 62-72 has been revised to address applicant's concerns in the remarks.

Applicant alleges that Petersen does not show a network operation center for receiving traffic data from a plurality of points of presence on a backbone.

The examiner disagrees. When used as a gateway on a backbone, Petersen's traffic analyzer functions as a network operation center for receiving traffic reports from a plurality of points of presence on the backbone that are connected to other partner networks.

Conclusion:

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Viet Vu whose telephone number is (703) 305-9597. The examiner can normally be reached on Monday through Friday from 8:00am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee, can be reached on (703) 305-8498.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600.



VIET D. VU
PRIMARY EXAMINER

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9/14/04